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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

In the Matter of  
  
Determination of  
Non-Dominant Status of  
Common Carriers in the  
Maritime Services

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PR-92-257  
No. DF-88.001-DS

To:           The Commission

**COMMENTS OF  
MOBILE MARINE RADIO, INC.**

Mobile Marine Radio, Inc. ("MMR") respectfully submits the following Comments regarding its Petition for Determination of Non-Dominant Common Carrier Status, filed February, 1988, with particular reference to the market for international telex services.

**I.   INTRODUCTION**

Mobile Marine Radio, Inc. is an international, full service maritime common carrier offering both telegraphy services, consisting of Morse telegraphy, narrow-band direct-printing (NB-DP or marine telex) and radiofacsimile, and also MF band (regional) and HF band (high seas) radiotelephony service. MMR also renders local radiotelephony service, operating in the VHF marine band and serving the Alabama coastal area south of Mobile, Alabama, Mobile Harbor and the Alabama Rivers.

## II. BACKGROUND AND PURPOSE OF COMMENTS

With the adoption of the First Report and Order in the Domestic Competitive Carrier proceeding, the Commission divided carriers into two categories: dominant carriers for whom continuing rate regulation was justified, and non-dominant carriers for whom continuing rate regulation was not justified. Domestic Competitive Carrier (First Report and Order), 85 F.C.C.2d 1 (1980). Following the issuance of this Report and Order, the Commission issued a series of Report and Orders streamlining regulation for various categories of carriers. In the Commission's Fourth Report and Order, the Commission indicated that, on request, it would consider streamlining regulations for carriers or services which had not been specifically addressed, including public coast maritime mobile radio service. Domestic Competitive Carrier (Fourth Report and Order), 95 F.C.C.2d 554, 582 (1983). Subsequently, the Commission issued its Final Rule in International Competitive Carrier Policies streamlining regulation for carriers in two product markets -- the international telephone message service (IMTS) and non-IMTS (telex service). 59 Rad. Reg. 2d (P&F) 283 (1985). Although maritime service was not specifically mentioned in International Competitive Carrier, such service is considered to be an international service under Section 3(f) of the Communications Act. Furthermore, the Commission indicated in a

subsequent proceeding that International Competitive Carrier determined maritime service to be non-dominant.<sup>1/</sup>

In response to the Commission's invitation in the Fourth Report and Order in Domestic Competitive Carrier, and to clarify the ruling in International Competitive Carrier, MMR, in conjunction with Waterway Communications System, Inc. (WATERCOM), a domestic maritime service provider, petitioned the Commission in February, 1988 to formally declare public coast maritime mobile radio services to be non-dominant, in both the domestic and the international markets. The Commission gave public notice to this Petition,<sup>2/</sup> but has not taken further or final action.

At the time MMR submitted its Petition, there were six major point-to-point telex carriers in the international market, three of which also rendered maritime services.<sup>3/</sup> Now, after several mergers and consolidations, three major carriers remain, all of which render both point-to-point and maritime telex

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<sup>1/</sup> See Elimination of Section 43.71 of the Commission's Rules, 3 FCC Rcd 588 (1988) (rescinding requirement for semi-annual reporting by public coast station operators).

<sup>2/</sup> DA-88-897 (released May 8, 1988).

<sup>3/</sup> At the time of International Competitive Carrier the following major carriers were competing in the telex market: Western Union, RCA Global Communications, ITT, TRT, Western Union International, and French Cable. Also, Graphnet and CCI rendered domestic and international telex service.

services.<sup>4/</sup> With this consolidation, MMR finds itself increasingly squeezed from a marketing standpoint due to the tying of maritime service to the point-to-point telex service. This is so for two reasons: (i) for MMR, as for any maritime telex carrier, point-to-point service is essential to link MMR's facilities with the land-based user community so to receive messages destined for ships and to effect delivery of traffic received from vessels at sea, and (ii) no longer are there any independently-based (i.e., non-maritime operating) telex carriers or, conversely, any point-to-point telex customers who do not have direct access to, and incentives to use, maritime service offered by the point-to-point telex provider.<sup>5/</sup>

The tying arrangements manifest themselves in two primary ways. First, the point-to-point telex carriers offer non-

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4/ MCI purchased Western Union International and RCA Global Communications; Western Union and ITT merged, and are now owned by AT&T which has applied for maritime telex authority; and TRT and French Cable were consolidated into TRT/FTC.

5/ While Graphnet and CCI also render point-to-point telex service, their market shares are relatively small compared with MCI, Western Union, and TRT/FTC. For domestic routings, it is an economic necessity to route traffic via the carrier that can effect delivery. Unlike the public switched telephone network where subscribers have equal access opportunities, telex customers have direct service relationships with their telex carrier. In this environment, cross-over traffic, i.e., that which originates on the lines of one telex carrier and is delivered to a customer of another carrier, takes a severe rate penalty. See e.g., TRT/FTC Tariff FCC No. 8, § 2.01, which sets forth a charge of \$0.75/minute where TRT/FTC is the sole handling carrier, \$0.94 for crossover with CCI, \$1.09 for crossover with WU or WUI, and \$4.36 for crossover with Graphnet.

but not  
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how does this  
relate to  
MMR's practice  
that was  
challenged  
by TRT?

tariffed volume-sensitive discounts amounting up to 30% (and possibly more), which, once the qualifying volumes are satisfied, apply to both the point-to-point and maritime services. In practice, the volumes necessary to qualify for the non-tariffed discounts are satisfied by the point-to-point traffic, thus providing a free ride for the customer to obtain a discount on their maritime traffic. Maritime carriers which do not have the point-to-point service necessary to subsidize the volume discounts thus are severely disadvantaged in the marketplace. Second, landline telex carriers can and do provide free access to customers to reach their maritime stations. Such free access is available, for example, for service messages (e.g., inquiries as to status of message delivery). When utilizing MMR's maritime service, that same customer must send status inquiries or other service messages to MMR on a paid basis, or MMR must underwrite the cost as a collect message or through an In-WATS service.

MMR submits these Comments to its Petition for Determination of non-dominant status to update the Commission on the changes in the international telex market and to request that the Commission differentiate regarding the requested non-dominant classification, finding those carriers who offer both point-to-point and maritime telex services to be dominant carriers in the maritime market and those who render only maritime service to be non-dominant. In this manner, preservation of the tariffing requirement would render non-tariffed discounts and other similar

inducements unlawful, thereby "leveling the playing field." Alternatively, MMR requests the Commission to require dual authority telex carriers to operate their point-to-point and their maritime services on fully-separated bases, thereby eliminating the tying arrangements.

III. THOSE CARRIERS POSSESSING BOTH LANDLINE AND MARITIME SERVICE SHOULD BE DECLARED DOMINANT CARRIERS IN THE MARITIME TELEX MARKET.

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landline?

In the First Report and Order in Competitive Common Carrier, the Commission declared that market power was the governing standard for determining which carriers were dominant, 85 F.C.C.2d 1 (1980). Market power is defined as the "control a firm can exercise in setting the price of its output." Id. at 21. In that Report and Order, the Commission recognized that a firm with "market power is able to engage in conduct that may be anti-competitive or otherwise inconsistent with the public interest." Id. A firm lacking market power, however, must "take the market price as given, because if it raises the price it will face an unacceptable loss of business, and if it lowers the price it will face unrecoverable monetary losses in an attempt to supply the market demand at that price." Id.

Before conducting a market power analysis, one must determine both the relevant product market and the relevant geographic market. See Competitive Common Carrier, 95 F.C.C.2d

554, 562-75 (1983). The particular product market of concern to MMR is maritime telex services. In International Competitive Carrier the Commission determined that every country represents a geographic market,. See International Competitive Carrier Policies, 59 Rad. Reg. 2d (P&F) 283. Hence, the geographic market for MMR is the domestic land based telex market serving United States customers and interconnecting with foreign based PTTs. Within these geographic and product markets it is necessary to focus on particular market features to determine whether an entity has market power. These features include the ability to control bottleneck facilities, the number and size of competing firms, the nature of barriers to entry, and the availability of reasonably substitutable services.

At the time International Competitive Carrier was adopted the Commission concluded that "no carrier is dominant in the non-IMTS [telex] market." Id. at 290. The Commission determined that there was adequate competition in the market at the time so that "any non-IMTS service provider attempting to price uncompetitively will be met by market forces making such action difficult if not impossible to sustain." Id. at 297. With the consolidation of the market, however, this conclusion no longer holds true. Now the market is concentrated in three major carriers, all of which offer both point-to-point and maritime services, with five other maritime carriers having no landline affiliates. Furthermore these carriers control bottleneck facilities, i.e., landline service, that they, competitive

maritime carriers and customers of both must use to link the message originator/addressee with the maritime service facility. Control of bottleneck facilities has been found to be prima facie evidence of market power. Competitive Common Carrier (First Report and Order), 85 F.C.C. 2d at 21.

As noted above, these carriers are using their market power in the point-to-point service market to obtain market power in the maritime service market by tying their maritime service to their point-to-point service through the use of non-tariffed volume discounts applicable to both services and preferential access arrangements. This tying arrangement represents a form of cross-subsidization, and is an anti-competitive practice vis-a-vis independent maritime operators. If the point-to-point carriers are allowed to tie their landline service to their maritime service by use of volume discounts and preferential access, smaller carriers will be forced out of business, leaving the telex market concentrated in the three carriers providing both landline and point-to-point service.

The Commission recognized the anti-competitive effect of tying arrangements in AT&T's Private Payphone Commission Plan, 3 FCC Rcd 5834, 5837 (1988). In this decision the Commission found that AT&T's practice of tying its "0+" service to its "1+" service violated the policies behind the antitrust laws. In so doing, the Commission found that AT&T had been the "traditional



dominant provider in the "0+" market" and, therefore, had market power in the tying product which it attempted to use to obtain market power in the tied product. Id. In the instant case, the major carriers have market power by the fact that they control the point-to-point service, and they now are attempting to tie the maritime service to the point-to-point service to obtain market dominance in the maritime market. Such practice is anti-competitive and, therefore, should be eliminated.

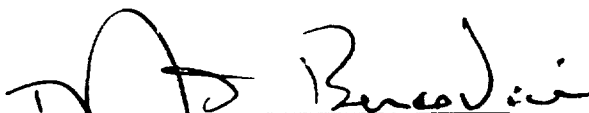
#### IV. CONCLUSION

While there has been substantial and vigorous competition for maritime telex service, that competitive environment has become skewed due to tying arrangements offered to customers by those carriers who both control the essential point-to-point connecting arrangements and offer competitive maritime service. In these circumstances, deregulation of those carriers is unwarranted. Rather, full enforcement of the tariffing requirements and anti-discrimination provisions of the Communications Act are necessary to maintain a competitive environment.

WHEREFORE, THE PREMISES CONSIDERED, Mobile Marine Radio, Inc. respectfully requests that the Commission declare those carriers offering both maritime and point-to-point telex capabilities to be dominant carriers or, in the alternative, to

require these carriers to operate their maritime and landline services on a separated basis.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Martin W. Bercovici", written over a horizontal line.

Martin W. Bercovici

Keller & Heckman  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001  
202-434-4144

Its Attorney

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